

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 351 (Delegate Carr, *et al.*)

Environmental Matters and Economic
Matters

Chesapeake Bay Restoration Consumer Retail Choice Act of 2010

This bill requires stores to charge and collect a fee of 5 cents per disposable carryout bag provided to a customer. The fee is not subject to sales and use tax. Stores may retain 1 cent of every 5-cent fee collected. Stores with a customer bag credit program may retain 2 cents of every 5-cent fee collected. Stores must remit fee revenue not retained to the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund. The bill modifies the authorized uses of that fund and redirects a portion of the new fee revenue to the Department of Labor, Licensing, and Regulation (DLLR), which must adopt implementing regulations, and the Maryland Department of the Environment (MDE), which must conduct specified outreach and education activities. The bill establishes penalties for violations.

The bill takes effect January 1, 2011.

Fiscal Summary

State Effect: General/special fund expenditures increase by \$747,800 in FY 2011 for additional DLLR staff (\$180,600) and for MDE public information and outreach efforts (\$567,300). Future year expenditures, which reflect annualization and inflation, assume Chesapeake and Atlantic Coastal Bays 2010 Trust Fund special fund revenue is available for program implementation, and reflects the redirection of \$750,000 in FY 2012 to MDE and DLLR and \$250,000 in FY 2013 to DLLR from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund. Special fund revenues to the trust fund increase significantly in FY 2011 and subsequent years due to the new fee. Potential minimal increase in general fund revenues from penalties assessed for violations.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	-	-	-	-	-
SF Revenue	-	\$750,000	\$250,000	-	-
SF Expenditure	-	\$1,073,200	\$587,800	\$353,200	\$369,300
GF/SF Exp.	\$747,800	\$0	\$0	\$0	\$0
Net Effect	(\$747,800)	(\$323,200)	(\$337,800)	(\$353,200)	(\$369,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill does not directly affect local operations or finances, but local governments could benefit to the extent they receive additional grants from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A “disposable carryout bag” is a paper or plastic bag provided by a store to a customer at the point of sale. A “disposable carryout bag” is not (1) a durable plastic bag with handles that is at least 2.25 mils thick and is designed and manufactured for multiple reuse; (2) a bag provided by a pharmacist to contain prescription drugs; (3) plastic bags sold in packages containing multiple plastic bags intended for use as garbage, pet waste, or yard waste bags; (4) a bag that a restaurant provides to a customer for food or drink; and (5) a bag used to:

- package bulk items, including fruit, vegetables, nuts, grains, candy, or small hardware items;
- contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
- contain or wrap flowers, potted plants, or other damp items;
- contain unwrapped prepared foods or bakery goods; and
- contain a newspaper or dry cleaning.

A “store” is a retail establishment that provides disposable carryout bags to its customers as a result of the sale of a product.

A “customer bag credit program” is a program implemented in a store that requires a store to pay a customer a credit of at least 5 cents for each bag provided by the customer for packaging their purchases; requires the total amount of the credit paid to a customer to be displayed on the customer transaction receipt; and is prominently advertised at each checkout register at the store.

Stores that provide disposable carryout bags must provide customers with bags that are made of 100% recyclable material. If the bags are made of paper, they must contain a minimum of 40% postconsumer recycled content, and display a specified phrase in a specified manner. If the bags are made of plastic, they must be made of high-density polyethylene film marked with the SPI resin identification code “2” or low-density polyethylene film marked with the SPI resin identification code “4,” and display a specified phrase in a specified manner.

Stores may not communicate that the reimbursement of the fee or any part of the fee they collect will be assumed or absorbed by the store or refunded to the customer. Also, store receipts must indicate the number of bags provided by the store and the total fee amount charged.

DLLR must adopt regulations to implement and enforce the bill. Penalties ranging from a maximum of \$100 for a first violation to a maximum of \$500 for a third or subsequent violation are authorized, subject to some limitations.

MDE must conduct an intensive public information campaign about disposable carryout bags as well as a specified outreach campaign by January 1, 2011.

The bill authorizes the use of Chesapeake and Atlantic Coastal Bays 2010 Trust Fund revenues for the administrative costs necessary to implement the bill. Specifically, the bill allocates \$500,000 of the bag fee revenue remitted by stores to the trust fund to MDE in fiscal 2012 for public information and outreach efforts. The bill also allocates \$250,000 of the bag fee revenue remitted by stores to the trust fund to DLLR in fiscal 2012, and \$250,000 in fiscal 2013, to implement the bill.

Current Law: State law does not address carryout bags provided by retail establishments.

Background: Americans use an estimated 50 to 80 billion plastic bags annually and the use of disposable carryout bags has been the center of much media attention. Due to concerns about the environmental impacts of plastic and paper bags, there is growing interest in banning their use. Proponents of such bans argue that the production of paper bags consumes a significant number of trees and that plastic bags clog waterways, harm wildlife, and consume valuable landfill space.

Several jurisdictions around the world have already taken action on this issue. Bangladesh, France, Uganda, and several other countries have approved nationwide bans on the use of plastic bags. Germany, Ireland, Denmark, Sweden, and Switzerland, among others, have a tax or levy on plastic bags in an effort to discourage their use. Still others, such as Holland and Canada, have focused on recycling efforts. Others are also

considering the implementation of bans or taxes in order to reduce plastic bag consumption.

In March 2007, San Francisco became the first city in the United States to ban nonbiodegradable bags from large grocery stores and pharmacies. Similar legislation is being debated in several other U.S. cities. In fact, the City of Annapolis considered, but did not enact, legislation to ban retailers from distributing plastic shopping bags in the city. Instead, retailers would have been required to offer bags made of recycled paper and to sell reusable bags. During its 2009 legislative session, the Virginia General Assembly considered, but did not adopt, bills banning single-use bags and charging fees for use of disposable plastic and paper bags. In April 2009, a bill (H.R. 2091) was introduced in the U.S. House of Representatives that imposes a retail tax on single-use carryout bags.

On January 1, 2010, a new law took effect in the District of Columbia banning the use of disposable, nonrecyclable plastic carryout bags and requiring specified stores to charge a fee of 5 cents for each disposable bag a shopper is given. The bag fee revenue must be used to clean and protect the Anacostia River and other impaired waterways.

Due to concerns associated with both plastic and paper bags, reusable bags (such as canvas bags) are gaining popularity, despite their additional cost.

Chesapeake and Atlantic Coastal Bays 2010 Trust Fund

The Chesapeake Bay 2010 Trust Fund was established by Chapter 6 of the 2007 special session to address the significant funding shortfall that exists with respect to the State's bay restoration activities. In 2008, Chapters 120 and 121 provided further clarification by specifying that the trust fund be used for nonpoint source pollution control projects and by expanding it to apply to the Atlantic Coastal Bays. The Chesapeake and Atlantic Coastal Bays 2010 Trust Fund's revenues come from a portion of the motor fuel tax and the short-term vehicle rental sales and use tax. The BayStat Subcabinet must administer the trust fund. The Governor's proposed fiscal 2011 budget includes \$42.1 million for the trust fund. However, the proposed Budget Reconciliation and Financing Act of 2010 (SB 141/HB 151) includes a provision that reduces the trust fund's fiscal 2011 funding by \$22.1 million and redirects the revenue to the State's general fund.

State Expenditures:

DLLR

DLLR general/special fund expenditures increase by \$180,581 in fiscal 2011, which reflects the bill's January 1, 2011 effective date. This estimate reflects the cost of hiring

one administrator, two field auditors, one clerk, and a part-time assistant Attorney General to develop and implement the program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- DLLR adopts regulations, develops an administration and enforcement scheme, and conducts outreach to retailers to encourage compliance; and
- DLLR conducts random audits in the field to ensure compliance.

Positions	4.5
Salaries and Fringe Benefits	\$141,996
One-time Start-up Costs	21,675
Operating Expenses	<u>16,910</u>
Total Fiscal 2011 DLLR Expenditures	\$180,581

Because the bill modifies the authorized uses of the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund to cover the bill’s administrative expenses beginning January 1, 2011, it is possible that DLLR’s costs in fiscal 2011 could be paid for with special funds to the extent they are available from bag fees or other existing revenue sources. If sufficient special funds are not available, general funds would be required.

Future year expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses. It is assumed that bag fee special fund revenue is available in fiscal 2012 and future years to support DLLR’s program costs.

MDE

While MDE is required to conduct information and outreach campaigns by January 1, 2011, the bill does not take effect until that date. Therefore, this estimate assumes that MDE begins the required information and outreach effort in July 2010 and concludes the effort in June 2011. Even if MDE’s deadline did not coincide with the bill’s effective date, Legislative Services advises that the campaigns will take a full year given the extensive scope of the requirements. Thus, MDE general/special fund expenditures increase by \$567,251 in fiscal 2011. This estimate reflects the cost of hiring one contractual employee for one year to develop and administer contractual public education and outreach efforts. It includes a salary, fringe benefits, one-time start-up costs, and operating expenses.

One-year Contractual Position	1
Contracts for Public Education and Outreach	\$522,500
Salary and Fringe Benefits	38,016
One-time Start-up Costs and Operating Expenses	<u>6,735</u>
Total Fiscal 2011 MDE Expenditures	\$567,251

It is possible that some of these costs could be paid for with special funds from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund to the extent sufficient special funds are available from bag fees or other existing revenue sources. To the extent sufficient special funds are not available, general funds would be required. Although MDE receives special fund revenue from the trust fund in fiscal 2012, it is assumed that outreach efforts would be undertaken immediately and already be completed by then. Thus, that money may not be spent as there are no ongoing duties for MDE under the bill. However, to the extent that sufficient funds are not available for MDE to conduct the campaign in fiscal 2011, MDE could delay the campaign until fiscal 2012 when special funds from the trust fund would be available to cover most costs for the campaign.

State Revenues: The bill may result in a significant increase in special fund revenues in fiscal 2011 and future years; however, the magnitude of the increase is unknown.

According to the U.S. Census Bureau's 2002 Economic Census, there are approximately 19,400 retail establishments in the State. *For illustrative purposes only*, assuming each retail establishment uses 10,000 plastic bags annually, and 1 cent of every fee is retained by the affected retail establishment, \$7.8 million is generated annually for the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund and \$1.9 million is retained annually by retail establishments.

Revenues generated by the bill depend on a number of variables, including the number of retail establishments impacted, number of bags used, and consumer shopping decisions. These variables may be shifting considerably. The number of retail establishments in the State may be much lower than estimated above due to the decline in Maryland's economy. Also, more consumers are using multi-use bags to carry goods and the Internet to meet their shopping needs. To the extent the fee provides an incentive for shoppers to use reusable bags or stop using disposable bags, revenues decrease. Also, to the extent stores create customer bag credit programs and individuals bring their own bags, revenues decrease.

Of the revenue deposited into the trust fund, \$750,000 is redirected in fiscal 2012 (\$500,000 to MDE and \$250,000 to DLLR) and \$250,000 is redirected in fiscal 2013 to DLLR.

When similar bills were being considered in the District of Columbia and Virginia, the Virginia Department of Taxation estimated a \$47.9 million revenue increase in the first year, and the District of Columbia Chief Financial Officer projected a \$3.6 million revenue increase – net of anticipated administrative costs – in the first year.

The bill establishes penalties for stores that violate the bill's requirements. This estimate assumes that the penalty provisions of the bill do not significantly affect State revenues; however, any penalties assessed would be paid into the general fund.

Small Business Effect: Because the bill impacts all retail establishments, a significant number of small businesses may be affected. The bill results in potentially significant additional operating responsibilities for small retailers, as they are required to (1) account for the number and type of bags their customers purchase; (2) provide carryout bags that meet specified requirements; (3) ensure customer transaction receipts include specified information; and (4) submit fee revenue to the State. However, small businesses may benefit from having the authority to retain a portion of the carryout bag fee. Small businesses with a customer bag credit program are required to implement the program in accordance with the requirements set forth in the bill, but retain a greater portion of the fees collected.

Additional Information

Prior Introductions: HB 1210 of 2009, a bill with similar provisions, received a hearing in the House Environmental Matters Committee, but no further action was taken.

Cross File: Although SB 462 (Senator Raskin, *et al.* - Finance and Education, Health, and Environmental Affairs) is designated as a cross file, it is different.

Information Source(s): U.S. Census Bureau; *The New York Times*; *The Washington Post*; Comptroller of Maryland; Council of the District of Columbia; Department of Natural Resources; Department of Labor, Licensing, and Regulation; Maryland Department of the Environment; Judiciary (Administrative Office of the Courts); Office of the Attorney General; Virginia Department of Taxation; Department of Legislative Services

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